

Chapter 10

Due Process Related to Permits

Overview

Introduction This chapter contains an overview and two sections that discuss due process.

What is due process? Due process is fundamental fairness within our hearing process. It is an orderly proceeding adapted to the nature of the case in which the individual receives adequate notice of a proposed action and the opportunity for the individual to be heard to defend his/her conduct or position.

General authority Food and Agricultural Code section 11512.5 authorizes the CAC to refuse, suspend, or revoke a permit pursuant to FAC section 14008, and also describes the processes required when the CAC refuses, suspends, or revokes a permit pursuant to section 14008.

FAC §14008 Pursuant to section 14008, any permit may be refused, revoked, or suspended for violating any conditions of the permit, a previous permit, or any provision of Division 7 or regulations issued pursuant to it; or for failing to pay a civil penalty or comply with any lawful order of the CAC, once that order is final. These are clearly actions in response to alleged prior violations.

References Food and Agricultural Code sections 11512.5, 12825, and 14008

In this chapter This chapter contains the following topics:

Topic	See Section...
Due Process As It Relates to Permits--Refusals Based on Evaluation of the Application	10.1
Due Process As It Relates to Permits--Refusals, Suspensions, and Revocations Based on Violations	10.2

Section 10.1

Due Process As It Relates to Permits--Refusals Based on Evaluation of the Application

“Refuse” is the same as “deny”	The Merriam-Webster Collegiate® Dictionary, Tenth Edition, defines “deny” as “to refuse to grant.” To “deny” a permit is the same as to “refuse” to issue a permit.
Due process for refusals	The CAC must provide “notice and an opportunity to be heard” or “due process” when refusing a permit, unless the applicant or activity does not meet an objectively determined minimum requirement. Examples include: product not labeled, no certified applicator, incomplete application.
Opportunity to correct permit application	If the CAC has objectively determined from the person’s application or other information that the person or activity does not meet a requirement <u>necessary to qualify for the permit</u> or if the person has an incomplete application, then the CAC may refuse that person; however, due process requires the applicant be given notice of the application’s defect and provided with an opportunity to correct the error or omission, if possible.
Refusal based on information submitted	Refusal based upon evaluation of information submitted with a permit application may not require the same procedures to satisfy the due process requirement as actions based on alleged prior violations committed by the applicant. These actions should follow the review and appeal process outlined in FAC section 14009. The permit applicant should be told the reasons for the refusal and be informed of his/her review and appeal rights pursuant to section 14009.
Sample form	A sample form, “Permit Refusal Based on Evaluation of the Application,” can be used as an abbreviated NOPA to inform the applicant of the general grounds for the CAC’s decision and his/her rights provided by the law and to record the denial for the CAC’s files. The sample form is on the following page.

(COPY THIS FORM UNDER COUNTY LETTERHEAD)

PERMIT REFUSAL BASED ON EVALUATION OF THE APPLICATION

Applicant_____Permit number_____Date_____

Pesticide requested_____Commodity/site_____

Pest_____Site ID, Location_____

☐ Request based on Pest Control Adviser's recommendation? ☐ Yes ☐ No

Name of Pest Control Adviser:_____

NOTICE OF GROUNDS FOR REFUSAL

(Food and Agricultural Code sections 14006.5 & 12825)

- ☐ There are serious, uncontrollable adverse environmental impacts that cannot be mitigated
- ☐ The proposed use is of less value than the benefits obtained
- ☐ There is a feasible alternative available that is less damaging to the environment
- ☐ There are sensitive sites too near to the proposed application site
- ☐ There is a likelihood of problems related to heterogeneous plantings of crops
- ☐ There is a likelihood of pest resurgence or secondary pest problems without compensating control of pest problem
- ☐ There are unsuitable meteorological conditions for use
- ☐ The timing is unsuitable in relation to bee activity
- ☐ Other_____
- ☐ Additional Comments_____

NOTICE OF OPPORTUNITY FOR REVIEW AND APPEAL OF ACTION

If you do not agree with this action, you may request reconsideration by this office in writing by stating: Who or what is affected by this action, the pesticide involved, the name and address of the operator of the property (if different from the person filing the request for review), and any other information that you believe is relevant to the issue.

You will receive a written response within ten days or as soon as practicable.

If you do not agree with our final decision, you may appeal the final decision to the Department of Pesticide Regulation. The Director will act on your appeal within ten days or as soon as practicable. Thereafter, you may request court review of the action.

Signed_____Date_____

Section 10.2

Due Process As It Relates to Permits--Refusals, Suspensions, and Revocations Based on Violations

Due process specifics for refusal, suspension, or revocation

The CAC must provide “notice and an opportunity to be heard” or “due process” when refusing, suspending, or revoking a permit. The following activities are required to ensure due process except as provided in Section 10.1:

If	Then,
the person’s permit is to be refused, suspended, or revoked based on an alleged violation (FAC section 11408),	that person shall be given a written NOPA, including the basis for the action, and have the right to request a hearing before the CAC within ten days of receiving the NOPA to refuse, revoke, or suspend. In the case of a suspension (immediate evaluation), the CAC shall inform the permittee, in writing, of the suspension as soon as practical, specifying the reasons for the (immediate) suspension.
a hearing is requested,	the notice of the time and place of the hearing shall be given at least ten days prior to the hearing date. The person will be given the opportunity to present any evidence or argument on his/her own behalf.
a hearing is not requested,	the CAC may take the proposed action without a hearing.
the person’s permit is refused, suspended, or revoked, and he/she had requested and appeared at the hearing,	he/she may appeal the CAC’s decision to the Director within ten days of mailing or personal service of the CAC’s decision.
